Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

JAMES E. BROWN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The Federal Circuit

SUPPLEMENTAL APPENDIX

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Order of the United States Court of Federal Claims, ***James E. Brown v. The United States,*** Nos. 94-227C and 94-358C, Hon. Bohdan A. Futey, Judge, Filed October 13, 1999 . . . . . SA-1 - SA-10

In the United States Court of Federal Claims

Nos. 94-227C and 94-358C
(Filed October 13, 1999)

****

JAMES E. BROWN,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

****

ORDER

This tax case is before the court on plaintiff's petition to vacate judgment and defendant's motion to strike plaintiff's petition. Plaintiff, pro *se,* petitions the court to vacate its prior judgment dismissing his claim for lack of jurisdiction. Tile United States (defendant) argues that plaintiff's petition is untimely pursuant to Rule 60(b) of the Rules of the United States Court of Federal Claims (RCFC), and therefore plaintiff is not entitled to the relief he seeks.

Factual Background[1]

On October 31, 1985, the Equal Opportunity Employment Commission (EEOC) determined that plaintiff had been subjected to unlawful retaliation for filing a discrimination complaint against defendant in violation of Title VII of the Civil Rights Act. The United States District Court for the District of Columbia found that the United States Army was bound by the EEOC's decision. ***Brown v. Marsh***, 729 F. Supp. 864, 867 (D.D.C. 1988). On May 11, 1989, the district court held that plaintiff was entitled to back pay and a promotion. ***Brown v. Marsh***, 713 F. Supp. 20, 24 (D.D.C. *1989),aff'd*, 918 F.2d 214(D.C. Cir. 1990). On October 4, 1990, the district court issued an order granting plaintiff back pay in the amount of $137,918.96. ***Brown v. Marsh***, Civ. Act. No. 80-1169 (D.D.C. Oct. 4, 1990) (order granting plaintiff relief).

On his 1990 tax return, plaintiff disclosed the payment of damages but did not include it as taxable income. Based upon plaintiff's 1990 tax return, the Internal Revenue Service (IRS) refunded a portion of the taxes plaintiff paid that year. On March 8, 1994, after examining his 1990 return, the IRS informed plaintiff that Title VII damages were includible as

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1 The facts of this case are discussed in an earlier unpublished decision of this court, *See* ***Brown v. United States***, Nos. 94-227C & 94-358C, slip op. at 2-3 (Fed. Cl. Feb. 22, 1996), and two decisions by the United States Tax Court. *See* ***Brown v. Commissioner***, 71 T.C.M. (CCH) 2301 (I 996); ***Brown v. Commissioner***, 74 T.C.M. (CCH) 1449 (1997). The facts below are discussed only as relevant to this decision.

income. The IRS also examined plaintiff's 1991 tax return and found evidence suggesting he received an additional $128,946 that year for his Title VII damages. ***Brown***, Nos. 94-227C & 94-358C, slip op. at 2. Plaintiff claimed he never received that payment.**2**

On April 7, 1994, plaintiff filed suit in this court seeking, among other things, $128,946 that he claimed he did not receive in 1991, as additional payment from his Title VII damages, additional back pay, and interest on outstanding payments. On May 12, 1995, the IRS issued a notice of deficiency regarding plaintiff's 1990 and 1991 taxes. On June 20, 1995, plaintiff filed a petition in the Tax Court, contesting his tax liability for both 1990 and 1991. In an opinion issued on February 22, 1996, the court determined that pursuant to 26 U.S.C. § 7422(e), plaintiff's filing a petition in the Tax Court to contest the notice of deficiency divested this court of jurisdiction over his tax claims. ***Brown***, Nos. 94-227C & 94-358C, slip op. at 5-6. The court dismissed plaintiff's complaint and plaintiff appealed. On August 5, 1996, the United States Court of Appeals for the Federal Circuit (Federal Circuit) affirmed this court's decision. ***Brown v. United States***, 95 F.3d 1165 (Fed. Cir. 1996).

Subsequently, plaintiff proceeded to litigate his case before the Tax Court. The Tax Court resolved several issues on summary judgment. Significantly, the Tax Court held that it possessed jurisdiction over plaintiff's taxes for the 1990 and

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2 During the proceeding before the Tax Court the parties stipulated that plaintiff in fact did not receive this sum. ***Brown***, 74 T.C.M. at 1451.

1991 tax years as determined in the notice of deficiency. ***Brown v. Commissioner***, 71 T.C.M. (CCH) 2301, 2303-04 (1996). In addition, the Tax Court determined that the notice of deficiency was not barred by the statute of limitations, and that the IRS's issuance of a refund for 1990 did not estop it from later asserting a deficiency for that year. *Id.* The Tax Court later held a trial on the outstanding issues, and held, *inter alia:* (l) defendant was not judicially estopped front assessing a deficiency for 1990, (2) plaintiff's tax return was deemed filed on July 1, 1992, and thus the notice of deficiency was filed within the statutory time period; and (3) plaintiff's back pay award was taxable. ***Brown v. Commissioner***, 74 T.C.M. (CCH) 1449, 1451-54 (1997).

Plaintiff appealed both decisions of the Tax Court to the United States Court of Appeals for the Sixth Circuit (Sixth Circuit). On April 27, 1999, the Sixth Circuit affirmed the decisions of the Tax Court. ***Brown v. Commissioner***, No. 98-1444, 1999 WL 283903 (6'h Cir. 1999). On July 26, 1999, plaintiff subsequently filed a petition for certiorari to the United States Supreme Court.

On June 25, 1999, plaintiff filed in this court a petition for relief from judgment, asserting that the Tax Court and Sixth Circuit found this court's February 22, 1996 decision dismissing plaintiff's claim for lack o jurisdiction to be erroneous. On August 5, 1999, defendant filed a motion to strike plaintiff's petition for relief from judgment, asserting his petition was untimely by two years, and therefore should be rejected by the court. On September 8, 1999, plaintiff filed a motion for sanctions "against the defendant," asserting that "its pleadings and other papers filed in this cause were filed in bad faith, and with intent to further injure the plaintiff and thwart

the Court's efforts to discharge its duty to dispense justice and enforce the laws and the Constitution of the United States."3 On October 1, 1999, defendant filed an opposition to plaintiff's motion for sanctions and motion for a protective order, arguing that plaintiff's contentions were baseless and asking that the court not require it to respond to any of plaintiff's future filings unless ordered by the court.

Discussion

A motion for relief from judgment pursuant to RCFC 60(b) "is one for extraordinary relief entrusted to the discretion of the court[.]" ***Yachts America, Inc. v. United States***, 8 Cl. Ct. 278,281, *aff'd*, 779 F.2d 656 (Fed. Cir. 1985). Thus, "it may be invoked only upon a showing of exceptional circumstances." ***Matos v. Secretary of DHHS***, 30 Fed. Cl. 223, 225 (1993) (citations omitted). These "exceptional circumstances" are listed in **RCFC** 60(b), which provides, in pertinent part:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.
>
> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable

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3 Plaintiff's Motion for Sanctions against the Defendant, at 1.

> neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

RCFC 60(b).

Plaintiff raises a number of issues which he claims necessitate the granting of his petition. First, plaintiff contends that defendant "induced [the Court of Federal Claims] into entering a judgment in [defendant's] favor through the use of . . . a fraudulent ("bogus" and "not bona fide" Notice of Deficiency) presentation."**4** According to plaintiff, this

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4 Petition for Relief from Judgment (Pet.) at 10. Plaintiff also avers that defendant "improperly induced the [Tax Court] into a manifest disregard of the Internal Revenue Code and into failing to apply the doctrines of *res judicata,* judicial estoppel and law-of-the-case to the referral as mandated by the

fraudulent notice of deficiency "cannot lawfully form the basis for a valid judgment," and cannot "confer upon, [or] serve to deprive a federal court of jurisdiction."**5** In addition, plaintiff asserts that the Tax Court and Sixth Circuit found this court's decision to dismiss plaintiff's complaint for lack of jurisdiction to be erroneous.

The court finds that plaintiff's petition is untimely. Although plaintiff avers that his claims are grounded in RCFC 60(b)(6), he explicitly accuses defendant of engaging in fraud. Such conduct is grounded in RCFC 60(b)(3). "[I]t is well-established that the catch-all exception of subsection (6) is not available unless the asserted grounds for relief are not recognized in clauses (1) through (5)." ***Freeman v. Secretary of DHHS***, 35 Fed. Cl. 280, 283 (1996). Plaintiff filed his petition on June 25, 1999, approximately three and one-half years after this court dismissed his complaint. The one year

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precedent of . . . ***Christianson v. Colt Indus. Operating Corp.***, 486 U.S. 800 [] (1988)." Plaintiff's Opposition to Defendant's Motion to Strike, at 1-2. RCFC 60(b)(3), however, "is aimed at misconduct which occurred between the time the plaintiff files a lawsuit and the time the court enters judgment." ***Optimal Health Care Servs., Inc. v. Travelers Ins. Co.***, 801 F. Supp. 1558, 1561 (E.D. Tex. 1992). Therefore, defendant's alleged conduct before the Tax Court would not serve as a basis for vacating this court's judgment. Assuming such conduct did occur, plaintiff should have raised this issue before the Tax Court.

5 Pet. at 8-9.

limitation imposed by subsections (1), (2), and (3) is considered "'an absolute bar to motions filed after that period.'" ***Freeman***, 35 Fed. Cl. at 283 (quoting ***United States v. Berenguer***, 821 F.2d 19, 21 (1st Cir. 1987)). Because plaintiff filed his petition more than one year after the court entered judgment, the court cannot address the merits of his petition.

Assuming, *arguendo*, that plaintiff timely filed his petition, the court lacks jurisdiction to address the merits of his claims. In his petition, plaintiff raises numerous allegations, many of which the Tax Court already rejected. More importantly, all of these allegations concern his tax liability for the 1990 and 1991 tax years. In its February 22, 1996 opinion, this court determined that pursuant to 26 U.S.C. § 7422(e) (1994), it lost jurisdiction to address the merits of his claims concerning the 1990 and 1991 tax years once plaintiff filed a petition in the Tax Court contesting his tax liability for those same tax years. ***Brown***, Nos. 94-227C & 94-358C, slip. op. at 5. That decision was affirmed by the Federal Circuit. Thus, the Tax Court was the proper venue for plaintiff to raise his arguments concerning his tax liability for the 1990 and 1991 tax years. ***See Erickson v. United States***, 309 F.2d 760, 767 (Ct. Cl. 1962) ("the Tax Court's jurisdiction, once it attaches, extends to the entire subject of the correct tax for the particular year").**6** Accordingly, the court cannot address the merits of plaintiff's claims.

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6 Plaintiff's contention that the Tax Court and Sixth Circuit found this court's decision erroneous is unpersuasive. The Tax Court held, in pertinent part:

Plaintiff also moves for sanctions, stating that counsel for defendant and the IRS acted in bad faith by filing fraudulent documents in an attempt to specifically injure plaintiff and obstruct the court in reaching a proper determination. Conversely, defendant asserts that plaintiff's motion for sanctions is baseless and moves for a protective order.

Where the court lacks subject matter jurisdiction, however, "it has no power to do anything but strike the case from its docket[.]" ***Johns-Manville Corp. v. United States***, 893 F.2d 324, 327 (Fed. Cir. 1989) (citing ***The Mayor v. Cooper***, 73 U.S. (6 Wall.) 247, 250 (1868)); *see also* ***Nat'l Presto Indus. v. Dazey Corp.***, 107 F.3d 1576, 1580 (Fed. Cir. 1997) ("[w]ithout jurisdiction, federal courts are powerless to make findings or otherwise decide a case"). Indeed, without subject

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> [s]ince respondent filed a notice of deficiency prior to the actual trial in the case before the Court of Federal Claims, and since petitioner filed a petition pursuant to sections 6212 and 6213, this Court does have jurisdiction over petitioner's 1990 and 1991 taxes as determined in the notice of deficiency.

Brown, 71 T.C.M. at 2303. The Sixth Circuit affirmed the Tax Court's decision. reasoning that "a notice of deficiency was issued prior to a hearing in the Claims Court, pursuant to 26 U.S.C. § 7422(e), and a petition for review was filed in the [T]ax [C]ourt, thus depriving the Claims Court of jurisdiction." ***Brown v. Commissioner***, No. 98-1444, 1999 WL 283903 (6th Cir. 1999).

matter jurisdiction, the court is precluded from addressing any issues relating to the merits of the case, even if to do so would be in the interest of justice. ***Christianson v. Colt Indus. Operating Corp.***, 486 U.S. 800, 818 (1988). It is therefore axiomatic that the court in this case does not have the authority to impose sanctions under RCFC 11. *See* ***Shiff v. United States***, 24 Cl. Ct. 249, 254, *reconsideration denied,* 24 Cl. Ct. 499 (199 l). Accordingly, plaintiff's request for sanctions is denied.

Conclusion

For the above-stated reasons, plaintiff's petition for relief from judgment is untimely. Assuming, *arguendo,* that plaintiff timely filed his petition, the court finds it lacks jurisdiction to address the merits of plaintiff's claims. Therefore, plaintiff's petition for relief from the court's judgment is denied. Consequently, defendant's motion for a protective order is moot.

IT IS SO ORDERED.

s/Bohdan A. Futey
BOHDAN A. FUTEY
Judge